DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA- 900]

Schedules of Controlled Substances: Placement of Metonitazene in Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final amendment; final order.

SUMMARY: With the issuance of this final order, the Administrator of the Drug Enforcement Administration is permanently placing *N*,*N*-diethyl-2-(2-(4-methoxybenzyl)-5-nitro-1*H*-benzimidazol-1-yl)ethan-1-amine (metonitazene), including its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, in schedule I of the Controlled Substances Act. This scheduling action discharges the United States' obligations under the Single Convention on Narcotic Drugs (1961). This action continues to impose the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, import, export, engage in research or conduct instructional activities with, or possess), or propose to handle metonitazene.

DATES: Effective [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Dr. Terrence L. Boos, Drug and Chemical Evaluation Section, Diversion Control Division, Drug Enforcement Administration; Telephone: (571) 362-3249.

SUPPLEMENTARY INFORMATION:

Legal Authority

The United States is a party to the 1961 United Nations Single Convention on Narcotic Drugs (Single Convention), March 30, 1961, 18 U.S.T. 1407, 570 U.N.T.S. 151, as amended. Article 3, paragraph 7 of the Single Convention requires that if the Commission on Narcotic Drugs (Commission) adds a substance to one of the schedules of such Convention, and the United States receives notification of such scheduling decision from the Secretary-General of the United Nations (Secretary-General), the United States, as a signatory Member State, is obligated to control the substance under its national drug control legislation. Under 21 U.S.C. 811(d)(1) of the Controlled Substances Act (CSA), if control of a substance is required "by United States obligations under international treaties, conventions, or protocols in effect on October 27, 1970," the Attorney General must issue an order controlling such drug under the schedule he deems most appropriate to carry out such obligations, without regard to the findings required by 21 U.S.C. 811(a) or 812(b), and without regard to the procedures prescribed by 21 U.S.C. 811(a) and (b). The Attorney General has delegated scheduling authority under 21 U.S.C. 811 to the Administrator of the Drug Enforcement Administration (Administrator of DEA or Administrator). 28 CFR 0.100.

Background

On April 12, 2022, DEA issued a temporary scheduling order, placing metonitazene (*N*,*N*-diethyl-2-(2-(4-methoxybenzyl)-5-nitro-1*H*-benzimidazol-1-yl)ethan-1-amine), along with six other substances,[1] in schedule I of the Controlled Substances Act (CSA). 87 FR 21556. That order for metonitazene was based on findings by the Administrator that the temporary scheduling was necessary to avoid an imminent hazard to the public safety; the order was codified at 21 CFR 1308.11(h)(54).

[1] Those six other substances, [butonitazene, etodesnitazene, flunitazene, metodesnitazene, *N*-pyrrolidino etonitazene, and protonitazene], will not be discussed further in this final order.

In November 2021, the Director-General of the World Health Organization recommended to the Secretary-General that metonitazene be placed in Schedule I of the Single Convention, as this substance has an opioid mechanism of action and similarity to drugs that are controlled in Schedule I of the Single Convention (*i.e.*, metonitazene is similar to drugs such as isotonitazene and fentanyl) and has dependence and abuse potential. On May 27, 2022, the United States government was informed by the Secretariat of the United Nations, by letter, that during its 65th session in March 2022, the Commission voted to place metonitazene in Schedule I of the Single Convention (CND Mar/65/2).

Metonitazene

As discussed in the background section, metonitazene is temporarily controlled in schedule I of the CSA upon the Administrator's finding it poses imminent hazard to the public safety. Metonitazene has a pharmacological profile similar to etonitazene (schedule I), isotonitazene (schedule I), and other schedule I and II synthetic opioids that act as mu-opioid receptor agonists. Because of the pharmacological similarities of metonitazene to etonitazene and isotonitazene (potent mu-opioid agonists), the use of metonitazene presents a high risk of abuse and has negatively affected users and communities. The abuse of metonitazene has been associated with at least 51 fatalities in the United States between July 2020 and August 2021.[2,3] The positive identification of this substance in post-mortem cases is a serious concern to the public safety.

[2] Trecki J, Gerona RR, Ellison R, Thomas C, Mileusnic-Polchan D. Notes from the Field: Increased Incidence of Fentanyl-Related Deaths Involving Para-fluorofentanyl or Metonitazene - Knox County, Tennessee, November 2020-August 2021. MMWR Morb Mortal Wkly Rep. 2022 Jan 28;71(4):153-155.
[3] Walton SE, Krotulski AJ, Logan BK. A Forward-Thinking Approach to Addressing the New Synthetic Opioid 2-Benzylbenzimidazole Nitazene Analogs by Liquid Chromatography-Tandem Quadrupole Mass Spectrometry (LC-QQQ-MS). J Anal Toxicol. 2022 Mar 21;46(3):221-231.

In July 2020, metonitazene was first reported in a drug seizure case in North Carolina and identified as a white powdery substance.[4] Law enforcement reports demonstrate that metonitazene is being illicitly distributed and abused. The illicit use and distribution of this substance are similar to that of heroin (schedule I) and prescription opioid analgesics. According to the National Forensic Laboratory Information System (NFLIS-Drug) database, which collects drug identification results from drug cases submitted to and analyzed by Federal, State and local forensic laboratories, there have been 1,158 reports for metonitazene between January 2020 and June 2022[5] (query date: July 18, 2022).

DEA is not aware of any claims or any medical or scientific literature suggesting that metonitazene has a currently accepted medical use in treatment in the United States. In addition, the Department of Health and Human Services advised DEA, by letter dated July 7, 2021, that there were no investigational new drug applications or approved new drug applications for metonitazene in the United States. Because metonitazene is not formulated or available for clinical use as an approved medicinal product, all current use of this substance by individuals is based on their own initiative, rather than on the basis of medical advice from a practitioner licensed by law to administer such a drug.

Therefore, consistent with 21 U.S.C. 811(d)(1), DEA concludes that metonitazene has no currently accepted medical use in treatment in the United States[6] and is most appropriately placed in schedule I of the CSA, the same schedule in which it currently

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[4] Krotulski AJ, Papsun DM, Walton SE, Logan BK. Metonitazene in the United States-Forensic toxicology assessment of a potent new synthetic opioid using liquid chromatography mass spectrometry. Drug Test Anal. 2021 Oct;13(10):1697-1711.

[5] Reports to NFLIS-Drug are still pending for 2022.

[6] Although, as discussed above, there is no evidence suggesting that metonitazene has a currently accepted medical use in treatment in the United States, it bears noting that a drug cannot be found to have such medical use unless DEA concludes that it satisfies a five-part test. Specifically, with respect to a drug that has not been approved by the Food and Drug Administration, to have a currently accepted medical use in treatment in the United States, all of the following must be demonstrated: i. the drug's chemistry must be known and reproducible; ii. there must be adequate safety studies; iii. there must be adequate and well-controlled studies proving efficacy; iv. the drug must be accepted by qualified experts; and v. the scientific evidence must be widely available. 57 FR 10499 (1992), pet. for rev. denied, Alliance for Cannabis Therapeutics v. DEA, 15 F.3d 1131, 1135 (D.C. Cir. 1994).

resides. Because control is required under the Single Convention, DEA will not be initiating regular rulemaking proceedings to permanently schedule metonitazene pursuant to 21 U.S.C. 811(a).

Conclusion

In order to meet the United States' obligations under the Single Convention and because metonitazene has no currently accepted medical use in treatment in the United States, the Administrator has determined that metonitazene, including its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, should remain in schedule I of the CSA.

Requirements for Handling

Metonitazene has been controlled as a schedule I controlled substance since April 12, 2022. Upon the effective date of the final order contained in this document, metonitazene will be permanently subject to the CSA's schedule I regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture of, distribution of, importation of, exportation of, engagement in research or conduct of instructional activities with, and possession of, schedule I controlled substances, including the following:

1. *Registration*. Any person who handles (manufactures, distributes, imports, exports, engages in research or conducts instructional activities with, or possesses), or who desires to handle, metonitazene must be registered with DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312. Retail sales of schedule I controlled substances to the general public are not allowed under the CSA. Possession of any quantity of this substance in a manner not authorized by the CSA is unlawful and those in possession of any quantity of this substance may be subject to prosecution pursuant to the CSA.

2. *Disposal of stocks.* Metonitazene must be disposed of in accordance with 21 CFR part 1317, in addition to all other applicable Federal, state, local, and tribal laws.

3. *Security*. Metonitazene is subject to schedule I security requirements and must be handled and stored pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.71–1301.76. Non-practitioners handling metonitazene must comply with the employee screening requirements of 21 CFR 1301.90–1301.93.

4. *Labeling and packaging*. All labels, labeling, and packaging for commercial containers of metonitazene must comply with 21 U.S.C. 825, and be in accordance with 21 CFR part 1302.

5. *Quota.* Only registered manufacturers are permitted to manufacture metonitazene in accordance with a quota assigned pursuant to 21 U.S.C. 826, and in accordance with 21 CFR part 1303.

6. *Inventory*. Every DEA registrant who possesses any quantity of metonitazene has been required to keep an inventory of all stocks of this substance on hand as of April 12, 2022, pursuant to 21 U.S.C. 827, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

7. *Records and Reports.* DEA registrants must maintain records and submit reports with respect to metonitazene pursuant to 21 U.S.C. 827, and in accordance with 21 CFR 1301.74(b) and (c), 1301.76(b), and 1307.11 and parts 1304, 1312, and 1317. Manufacturers and distributors must submit reports regarding metonitazene to the Automation of Reports and Consolidated Order System pursuant to 21 U.S.C. 827 and in accordance with 21 CFR parts 1304 and 1312.

8. *Order Forms*. All DEA registrants who distribute metonitazene must continue to comply with order form requirements pursuant to 21 U.S.C. 828 and in accordance with 21 CFR part 1305.

9. *Importation and Exportation*. All importation and exportation of metonitazene must continue to comply with 21 U.S.C. 952, 953, 957, and 958, and in accordance with 21 CFR part 1312.

10. *Liability*. Any activity involving metonitazene not authorized by, or in violation of the CSA, is unlawful, and may subject the person to administrative, civil, and/or criminal sanctions.

Regulatory Analyses

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)

This action is not a significant regulatory action as defined by Executive Order (E.O.) 12866 (Regulatory Planning and Review), section 3(f), and the principles reaffirmed in E.O. 13563 (Improving Regulation and Regulatory Review); and, accordingly, this action has not been reviewed by the Office of Management and Budget (OMB). This action makes no change in the status quo, as metonitazene is already listed as a schedule I controlled substance.

Executive Order 12988, Civil Justice Reform

This action meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132, Federalism

This action does not have federalism implications warranting the application of E.O. 13132. This action does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications warranting the application of E.O. 13175. The action does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Administrative Procedure Act

The CSA provides for an expedited scheduling action where control is required by the United States' obligations under international treaties, conventions, or protocols. 21 U.S.C. 811(d)(1). If control is required pursuant to such international treaty, convention, or protocol, the Attorney General, as delegated to the Administrator, must issue an order controlling such drug under the schedule he deems most appropriate to carry out such obligations, and "without regard to" the findings and rulemaking procedures otherwise required for scheduling actions in 21 U.S.C. 811(a) and (b). *Id.*

In accordance with 21 U.S.C. 811(d)(1), scheduling actions for drugs that are required to be controlled by the United States' obligations under international treaties, conventions, or protocols in effect on October 27, 1970, shall be issued by order (as opposed to scheduling by rule pursuant to 21 U.S.C. 811(a)). Therefore, DEA believes that the notice and comment requirements of section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, do not apply to this scheduling action.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) applies to rules that are subject to notice and comment under section 553(b) of the APA or any other law. As explained above, the CSA exempts this final order from notice and comment. Consequently, the RFA does not apply to this action.

Paperwork Reduction Act of 1995

This action does not impose a new collection of information requirement under the Paperwork Reduction Act of 1995. 44 U.S.C. 3501–3521.

Unfunded Mandates Reform Act of 1995

In accordance with the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1501 *et seq.*, DEA has determined and certifies that this action would not result in any Federal mandate that may result "in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year * * *." Therefore, neither a Small Government Agency Plan nor any other action is required under UMRA of 1995.

Congressional Review Act

This order is not a major rule as defined by the Congressional Review Act (CRA), 5 U.S.C. 804. However, DEA is submitting reports under the CRA to both Houses of Congress and to the Comptroller General.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, DEA amends 21 CFR part 1308 as follows:

PART 1308--SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), 956(b), unless otherwise noted.

2. In § 1308.11:

a. Redesignate paragraphs (b)(55) through (b)(93) as paragraphs (b)(56) through (b)(94), respectively;

b. Add new paragraph (b)(55); and

c. Remove and reserve paragraph (h)(54).

The addition reads as follows:

§ 1308.11 Schedule I.

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(b) * * *

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(55) Metonitazene (*N*,*N*-diethyl-2-(2-(4-methoxybenzyl)-5-nitro-1*H*-benzimidazol-1-yl)ethan-1-amine)	9757
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Signing Authority

This document of the Drug Enforcement Administration was signed on August 14, 2023, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the Federal Register.

Scott Brinks,
Federal Register Liaison Officer,
Drug Enforcement Administration.

[FR Doc. 2023-17778 Filed: 8/17/2023 8:45 am; Publication Date: 8/18/2023]